

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LUIS TORRES,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

Civil Action No. 08-200 Erie

MEMORANDUM ORDER

____ Plaintiff's civil rights complaint was received by the Clerk of Court on July 9, 2008 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The chief magistrate judge's report and recommendation, filed on May 20, 2009 [22], recommends that the Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment [19] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at SCI Albion, where he is incarcerated, and on the Defendant. No objections were filed. After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 16th Day of June, 2009;

IT IS ORDERED that the Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment [19] be, and hereby is, GRANTED in part and DENIED in part as follows:

1. Defendants' motion to dismiss Plaintiff's claims for monetary damages against the Commonwealth Defendants in their official capacities is GRANTED and said claims are DISMISSED;
2. Defendants' motion to dismiss Plaintiff's claims against Defendant Beard is DENIED;

3. Defendants' motion to dismiss Plaintiff's Eighth Amendment claim and/or have summary judgment entered in their favor with regard to such claim is DENIED; and
4. Defendants' motion to dismiss Plaintiff's retaliation claim and/or have summary judgment entered in their favor with regard to such claim is DENIED.

The report and recommendation of Chief Magistrate Judge Baxter, dated May 20, 2009 [22], is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin
United States District Judge

cc: all parties of record
Chief U.S. Magistrate Judge Baxter